



OFFICE of the ATTORNEY GENERAL
GREG ABBOTT

September 18, 2003

Mr. Ronald D. Stutes
Brown & Hofmeister
1717 Main Street, Suite 4300
Dallas, Texas 75201

OR2003-6585

Dear Mr. Stutes:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 187881.

The City of Highland Village (the "City"), which you represent, received a request for all video or audio recordings regarding domestic disturbance calls received on April 10, 2003, including videotape number 399. You claim that the requested information is excepted from disclosure pursuant to sections 552.103 and 552.130 of the Government Code. We have considered the exceptions you claim and have reviewed the information submitted.

Section 552.103 provides in pertinent part:

- (a) Information is excepted from [required public disclosure] if it is information relating to litigation of a civil or criminal nature to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party.

....

- (c) Information relating to litigation involving a governmental body or an officer or employee of a governmental body is excepted from disclosure under Subsection (a) only if the litigation is pending or reasonably anticipated on the date that the requestor applies to the officer for public information for access to or duplication of the information.

Gov't Code § 552.103(a), (c). The City maintains the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation is pending or reasonably anticipated on the date that the governmental body receives the request for information, and (2) the information at issue is related to that litigation. *See University of Tex. Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479, 481 (Tex. App.—Austin 1997, no pet.); *see also Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.—Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 at 4 (1990). The City must meet both prongs of this test for information to be excepted under section 552.103(a).

You state, and provide documentation showing, that litigation involving the requestor's client and the City is pending and was pending on the date that the City received the present request for information. Based on our review of the submitted information, we conclude that the City has demonstrated that two of the submitted videotapes, both audio tapes, and the last incident included on videotape number 399 are related to that litigation for purposes of section 552.103. However, we also determine that the City has not demonstrated how the remainder of videotape number 399 relates to the pending litigation. Accordingly, the City may only withhold two of the submitted videotapes, both audio tapes, and the last incident included on videotape number 399 from disclosure pursuant to section 552.103 of the Government Code.

Generally, however, once information has been obtained by all parties to the litigation through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). Thus, information that has either been obtained from or provided to the opposing party in the litigation is not excepted from disclosure under section 552.103(a), and it must be disclosed. Further, the applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

With regard to the remainder of videotape number 399, we note it contains information that is protected by sections 552.119 and 552.130 of the Government Code. Section 552.130 provides in relevant part:

(a) Information is excepted from the requirement of Section 552.021 if the information relates to:

- (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]
- (2) a motor vehicle title or registration issued by an agency of this state[.]

You must withhold the Texas driver's license and license plate numbers under section 552.130. Section 552.119 excepts from public disclosure a photograph of a peace officer that, if released, would endanger the life or physical safety of the officer unless one of three

exceptions applies.¹ The three exceptions are: (1) the officer is under indictment or charged with an offense by information; (2) the officer is a party in a fire or police civil service hearing or a case in arbitration; or (3) the photograph is introduced as evidence in a judicial proceeding. This section also provides that a photograph exempt from disclosure under this section may be made public only if the peace officer gives written consent to the disclosure. Open Records Decision No. 502 (1988). The video contains images of peace officers and it does not appear that any of the exceptions are applicable. Unless the peace officers have executed any written consents to disclosure, the City must withhold the video images of the peace officers from disclosure under section 552.119. The City must redact the Texas driver's license and license plate numbers and images of the peace officers from the video before releasing it. The remainder of this portion of the videotape must be released. However, to the extent that the City does not maintain the technological capability to redact this information from the videotape, we conclude that the City must withhold the videotape from disclosure in its entirety.

In summary, the City may withhold two of the submitted videotapes, both audio tapes, and the last incident included on videotape number 399 from disclosure pursuant to section 552.103 of the Government Code. The City must withhold from the remainder of videotape number 399 any depiction of a peace officer under section 552.119, as well as Texas driver's license numbers and license plate numbers under section 552.130. The remainder of that portion of videotape number 399 must be released. However, to the extent that the City does not maintain the technological capability to redact this information from the videotape, we conclude that the City must withhold the videotape from disclosure in its entirety.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the

¹"Peace officer" is defined by article 2.12 of the Code of Criminal Procedure.

governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Heather Pendleton Ross
Assistant Attorney General
Open Records Division

HPR/sdk

Ref: ID# 187881

Enc: Submitted documents

c: Ms. Jane E. Bishkin
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(w/o enclosures)